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Infiniti Electric, Inc. and International Brotherhood of Electrical Workers, Local Union No. 611, AFL-CIO. Case 28-CA-16678

May 11, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon a charge filed by the Union on August 14, 2000, the Acting General Counsel of the National Labor Relations Board issued a complaint on October 31, 2000, against Infiniti Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 9, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 11, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 28, 2001, notified the Respondent that unless an answer were received by March 7, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has maintained an office and principal place of business in Carlsbad, New Mexico, where it is engaged in business as a contractor performing electrical, heating, cooling, and plumbing services for commercial and residential customers. During the 12-month period ending Au-

gust 14, 2000, the Respondent, in the course and conduct of its business operations, purchased and received at the Respondent's facility goods, supplies, and materials valued in excess of \$50,000 directly from points outside the State of New Mexico. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the persons named below have occupied the positions set forth opposite their respective names and are supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act:

Melissa R. Methola	Owner and President
Eugene F. Methola	General Manager

The following employees of the Respondent constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen and apprentice wiremen and technicians, general foremen, employed by the Respondent but excluding all other employees, guards, and supervisors as defined in the Act.

Since on or about November 1, 1999, the Union has been the designated collective-bargaining representative of the unit and since that time has been recognized as such by the Respondent. Such recognition has been embodied in a collective-bargaining agreement by and between the Respondent and the Union, which is effective by its terms from the period from June 1 to May 31, 2001 (the Agreement).¹

At all times since on or about November 1, 1999, the Union, by virtue of Section 9(a) of the Act, has been and is now, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

Since on or about March 20, 2000, the Respondent engaged in the following acts and conduct:

1. Hired employees without seeking to utilize the referral procedure provided for in the Agreement;
2. Paid employees different rates of pay than those provided for in the Agreement; and
3. Failed to make contributions to the health and welfare, pension, and joint apprentice training committee, and NEBF trust funds as provided for in the Agreement.

The Respondent engaged in the acts and conduct described above unilaterally and without prior notice to the Union and without having afforded the Union an oppor-

¹ The complaint does not indicate the year in which the collective-bargaining agreement took effect.

tunity to negotiate and bargain with the Respondent with respect to such acts and conduct and the effects of such acts and conduct.

The subjects set forth above relate to rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to utilize the referral procedure provided for in the Agreement, we shall order the Respondent, pursuant to *J. E. Brown Electric*, 315 NLRB 620 (1994), to offer immediate and full employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and to make them whole for any losses suffered by reason of the Respondent's failure to hire them. Backpay is to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. Reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceedings. *J. E. Brown*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) paying employees different pay rates than those provided for in the Agreement and failing to make contributions to the health and welfare, pension, joint apprenticeship training, and NEBF trust funds as provided for the Agreement, we shall order the Respondent to make whole its unit employees for loss of earnings suffered by them as a result of the Respondent's unlawful conduct. Backpay is to be computed in accordance with *Ogle Protection Services*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 293 NLRB 1173 (1987).

In addition, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 fn. 7 (1979). In addition, the Respondent shall reimburse its unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891

fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Services*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.²

ORDER

The National Labor Relations Board orders that the Respondent, Infiniti Electric, Inc., Carlsbad, New Mexico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Hiring employees without seeking to utilize the referral procedure provided for in its collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local Union No. 611, AFL-CIO.

(b) Paying employees different pay rates than those provided for in its collective-bargaining agreement with the Union.

(c) Failing to make contributions to the health and welfare, pension, joint apprenticeship training committee and NEBF trust funds as provided for in its collective-bargaining agreement with the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the most recent collective-bargaining agreement.

(b) Offer full and immediate employment to those applicants who would have been referred to the Respondent for employment by the Union were it not for the Respondent's unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of the Respondent's failure to hire them, with interest, in the manner set forth in the remedy section of this decision.

(c) Make whole its unit employees for loss of earnings suffered by them as a result of the Respondent's unlawful conduct in paying employees different pay rates than those provided for in its collective-bargaining agreement with the Union, as set forth in the remedy section of this decision.

(d) Make whole its unit employees, with interest, for any loss of earnings, benefits or expenses ensuing from its failure to make contributions to the health and welfare pension, joint apprenticeship training committee and NEBF trust funds as provided for in its collective-bargaining agreement with the Union.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Carlsbad, New Mexico, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 20, 2000.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 11, 2001

John C. Truesdale,	Chairman
Wilma B. Liebman,	Member
Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT hire employees without seeking to utilize the referral procedure provided for in our collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local Union No. 611, AFL-CIO.

WE WILL NOT pay our employees different pay rates than those provided for in our collective bargaining agreement with the Union.

WE WILL NOT fail to make contributions to the health and welfare, pension, joint apprenticeship training committee and NEBF trust funds as provided for in our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the most recent collective-bargaining agreement.

WE WILL, within 14 days of the date of this Order, offer full and immediate employment to those applicants who would have been referred to us for employment by the Union were it not for our unlawful conduct, and make them whole for any loss of earnings and other benefits suffered by reason of our failure to hire them, with interest.

WE WILL make whole our unit employees for loss of earnings suffered by them as a result of our unlawful conduct in paying employees different pay rates than those provided for in its collective-bargaining agreement with the Union.

WE WILL make whole our unit employees with interest, for any loss of earnings, benefits or expenses ensuing from our failure to make contributions to the health and welfare pension, joint apprenticeship training committee and NEBF trust funds as provided for in our collective-bargaining agreement with the Union.

INFINITI ELECTRIC, INC.